
(1988) 12 OHC CK 0012
In the Orissa High Court
Case No : O.J.C. No. 644 of 1988

The Governing Body

APPELLANT

Vs

Berhampur University and Others

RESPONDENT

Date of Decision : 03-12-1988

Acts Referred:

Berhampur University Act, 1966 — Section 17, 18
Constitution of India, 1950 — Article 226

Citation : (1989) 67 CLT 476

Hon'ble Judges : S.C. Mohapatra, J; R.C. Patnaik, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—These two applications under Article" 226 of the Constitution of India have been filed one by the Governing Body of Sanjay Memorial Institute of Technology (in short hereafter "the Institute") and the other by the Principal, Post Graduate Centre for Management Studies (in short hereinafter "the College"). Affiliation of the College is the common question involved in both, the writ applications. Accordingly they were heard together and are disposed of in this common judgment.

2. The Institute is an educational agency which established the College from the academic session 1981-82 for imparting instruction to the students to be eligible to appear at the examination for the two year degree course of Master in Business Administration (hereafter referred to as "the MBA") conducted by the Berhampur University under the Regulations of the University. College not having been affiliated in the academic session 1986-87 the students admitted to the College are not able to appear at the examinations. To avoid this difficulty these two writ applications have been filed.

3: Students admitted to a College affiliated to the University are entitled to appear at the MBA examination. Without affiliation a College does not have the privilege of presenting its students for appearing at the examination. The word

"affiliation" is also expressed as admission of a College to the privilege of the University. Section 17 of the Berhampur University Act, 1966 (in short hereafter "the Act") provides for admission of an educational institution to the privileges of the University as a College on an application being made in that behalf. In case the syndicate of the University is of opinion that the educational institution can be granted affiliation the same is to be recommended to the senate for its approval. For getting affiliation the provisions of the statute are, to be substantially complied with by the applicant. Chapter XX of the Statutes made under the Act provides for admission of an educational institution to the privileges of the University. Section 18 of the Act provides for deprivation of the privileges granted to a College for which a proposal is to be given by two members of the syndicate. After giving reasonable opportunity to the College to raise objection to the proposal, syndicate is to consider the same. Proceedings of the syndicate with regard to the consideration along with a copy of objection, if any filed by the Governing Body of the College is to be placed before, the senate. Senate is to consider the same and decide the question of deprivation on the materials on record. In case the decision is in favour of depriving a College of the privileges, a copy of the proceeding of the senate alongwith a copy of the proceeding of the syndicate is, to be placed before the Chancellor who has the power to rescind or modify the order of the senate. Proposal for deprivation of the privileges once granted to a College is thus, required to be tested at different stages since such deprivation has far reaching consequences on education, the College and the students admitted to the College.

4. Dr. S.C. Dash, learned Counsel for the Petitioner submitted that under the scheme of affiliation as provided under the Act there is no scope for provisional affiliation. Accordingly, affiliation once granted is to be taken to be permanent unless the same is withdrawn as provided u/s 18 of the Act. When Petitioner-college has accepted provisional affiliation for years since 1981-82 the submission of Dr. Dash if accepted would invalidate the provisional affiliation itself since the same would be beyond the statutory power of the University. It would have far reaching consequences. Therefore, in the interest of the College as well as the students who have already been examined and conferred degrees by the University the question whether there is scope for provisional admission to the privileges of the University is not to be decided in the present case. The question if the, provisional affiliation has been validly refused by the University alone is to be considered which would be adequate for disposal of the two writ applications. The question of permanent affiliation cannot also be determined effectively in this case since the date of application, the contents of the application and the facts relating to compliance of the provisions of the statute either fully or substantially are not stated in the writ applications. However, referring to statutes 191-A and 191-8 which are with regard to colleges imparting instruction in two year degree course it can be stated that provisional, temporary or conditional affiliation are not unknown to the Act and the statute made thereunder.

5. Whether the affiliation is permanent or provisional, Section 17 of the Act is the source of such / power, of the University. It provides that the provisions of the statute are to be substantially complied with. Chapter XX of the statute provides for affiliation. Colleges are classified to be either Arts. Science. Commerce; or Law or Bachelor of Education as provided in statutes 182-A, 182-8 and 182-C. . These provisions are prohibitions for granting affiliation. The College is neither teaching Law nor Bachelor of Education course. It is, therefore, a College teaching Arts. Science or Commerce. Amongst others, it is to satisfy that qualified staff as per norms and yardstick prescribed by the Government have been appointed. Such norms and yardstick have not been "brought to record. Under statute 182, application for affiliation is required to be made so as to reach the Registrar of the University not later than 30th of November of the year immediately preceding, the academic year in which the course is proposed to be imparted or under special circumstances on or before 15th of January on payment of late fee, of Rs. 1000/- Neither of the parties have brought on record the date of first application for affiliation. The fact that time for application has been prescribed -indicates that without affiliation, the admission of the students in the coming academic session gives no privilege to the College to present its candidates at the examination to be held by the University. The time prescribed indicates that the application for affiliation is to be considered within four weeks by the syndicate as prescribed in statute 184. When the syndicate considers the application and desires to proceed with the same, it may make local enquiry by a term of competent persons as provided in statute 187. On careful consideration of the report, syndicate may refuse the application for affiliation when the fact would be intimated to the College and a report is to be submitted to the senate. Where, however, it is of opinion that affiliation maybe granted it shall submit the proceeding to the senate and it is incumbent on the syndicate to place the matter before the senate .at its first available meeting as required under statute 189. All these" provisions make it dear that the application is to be disposed of before the academic session commences. Under statute 22 there is to be at least one ordinary meeting of the senate in a year. Under statute 23 Vice Chancellor has been authorised to convene the special meeting of the senate. Special meeting can also be convened by the Vice Chancellor upon requisition as provided in statute 23 (2). Reading these provisions. I am inclined to hold that in case the proceeding and consideration of the application by the by indicate is not complied by the time the meeting of the senate is held the Vice Chancellor has to call a special meeting for the purpose so that where,the syndicate is of the opinion that affiliation should be granted to the College the same can be placed before the senate before the academic session begins on 1st of June of the year. Thus, affiliation of a college by the University is of great importance which is to be considered with case and caution and with expedition.

6. One of the pre-conditions of the application for affiliation is the concurrence of the State Government. In the present case, provisional concurrence was given to the College by the State Government for the academic sessions 1981-82 and

1982-83 on 5-3-1982. On 19-5-1982 University intimated the Institute that affiliation has been granted to the College by the syndicate in its meeting held on 23-4-1982 for 48 seats for the sessions 1981-82 and 1982-83 in anticipation of the approval of the senate and it would be subject to the condition laid down by the Government while giving the provisional affiliation on 5-3-1982. Under the statute opinion of the syndicate for affiliation is not affiliation and is not required to be communicated. Approval of the opinion of the syndicate by the senate has not been brought to record. There was no concurrence by the State Government for the academic session 1983-84 and accordingly, there was no affiliation by the University for that year also. However, it is seen from the letter of the University dated 20th September, 1984 (Annexure-6) that for the session 1983-84 the strength at the College was raised from 64 to 68 for that year only. Government gave provisional concurrence for the years 1984-85 and 1985-86 subject to the fulfillment of the conditions indicated in the letter dated 5-3-1982 indicating provisional concurrence. Thereupon the University also granted provisional affiliation to the College for the years 1984-85 and 1985-86 on 8-4-1986 as per Annexure-8. This provisional affiliation was subject to nine conditions indicated in the Annexure to the said letter. The same was not challenged by the College either not to be required under the statute or in right time. There is no guideline prescribed by the Government for giving concurrence to a College teaching MBA course. There is also no guideline by the University which would be required to be kept in mind by the team of experts making local enquiry. In this background, provisional concurrence and provisional affiliation were being communicated and students of the College were being entertained by the University for being examined till the end of session 1985-86.

7. On 7-3-1986 University intimated the College as per Annexure-7 that the College has not obtained the government concurrence. A team of inspectors was sent to the College on 21-3-1986 to report on the suitability of the College for affiliation. Although the inspecting team found deficiencies and shortfalls, it recommended post facto affiliation for the academic sessions 1984-85 and 1985-86. While granting the provisional concurrence for the years 1984-85 and 1985-86 State Government indicated that no students should be admitted for the academic session 1986-87 without the concurrence of the Government and affiliation by the University. University also while granting the provisional affiliation for the sessions 1984-85 and 1985-86 indicated the same. On 28-4-1986, the College requested the University for grant of permanent affiliation for the two year MBA course. Government was also moved for concurrence. University issued a press note thereafter in respect of various colleges including the College having no affiliation and declared that students may take admission at their own risk. On the next day however, admission notice in the College was published by the Institute for the two year MBA Course 1986-88. University took exception to it and requested the College to withdraw the advertisement. Correspondences went on. On 30th of March, 1987 University intimated the Institute not to grant affiliation to the College for the year 1986-87

since the requirements were not satisfied (Annexure-1/a). On 21-8-1987, Principal was intimated in reply by the University that the question of holding MBA, Part 11 examination for the students in the College who prosecuted their studies during the period after 30th of May, 1986 does not arise since the affiliation granted to the College had expired on 31-5-1986.

8. From the aforesaid discussions it is clear that the educational agency. i.e., the Institute admitted students even in the academic session 1981-82 before getting concurrence of the Government and affiliation of the University. Since career of students is involved. I am inclined to hold that the action of the Institute was not proper. It might be that the concurrence and affiliation were given provisionally post facto to protect the career of students already admitted. When Section 18 of the Act provides for scrutiny at various stages before a College is deprived of its affiliation, abrupt refusal of provisional affiliation is not desirable. When provisional affiliation had been given. University must have been satisfied that the minimum requirements have been satisfied it was not so satisfied, clear notice ought to have been given indicating the deficiencies as on 8-4-1986. Time was too short for the Institute to remove the deficiencies. When reports of other competent persons were available to indicate that the standard maintained by the College is adequate., the Institute ought to have been given a chance to explain before refusal of the provisional affiliation for the year 1986-87 specially when State Government has given post facto provisional concurrence despite its warning in the past. One of the conditions of concurrence as per letter dated 7-3-1982 (Annexure-3) was that the qualification and yardstick of teaching and non-teaching staff as well, as other academic criteria are to be in accordance with the norms as may be prescribed by the University. All India Board of Technical Studies and Management, and University Grants Commission from time to time. Under statute 182-A the norms and yardstick are to be prescribed by the Government. No such norm prescribed by Government has been brought to the record. Government depended upon future norms to be prescribed by University the All India Board of Technical Studies and Management as well as University Grants Commission. University while granting affiliation also, adopted the conditions laid down by the Government. In case the standard as laid down by the All India Board of Technical Studies and Management and by, the University Grants Commission were not being observed. University ought to have brought to the notice of the College which of the norms and yardstick have not been fulfilled specifically. This has not been done. Provisional affiliation was being granted for different periods. This might have led the College authorities to have a feeling that students can be admitted and despite warning, provisional affiliation would be granted. In this background students admitted in the year 1986-87 for the course 1986-88 ought not to be allowed to suffer. Interest of justice demands that the State Government having given concurrence for the year 1986-87 and 1987-88. University ought to be directed to grant provisional affiliation for this period also.. While so directing I cannot forget that Sub-standard educational institutions affect the education and ultimately the society.

Hence, State Government ought to lay down norms for giving concurrence either provisionally or finally taking into account the standards laid down by the All India Board of Technical Studies and Management and by the University Grants Commission. It ought not to leave the educational" agency to knock at the doors of those bodies. State Government may make provisions for rescinding the concurrence in case future standards to be laid down by it are not complied with. Similarly. University ought to lay down the norms to be followed by the team of experts where the provisions of the statute have been substantially complied with. In the return the circumstances under which provisional affiliation was being granted from year to year ought to have been clearly explained. It should be remembered that laxity for a long time and sudden rigidity immediately "is one of the causes for drawing inferences which might have no basis. Therefore, authorities are required to act diligently, carefully and cautiously while dealing with educational institutions and students. Since insecurity also leads to imbalance, I have no doubt that the application for concurrence which is pending .with the State Government by giving provisional, concurrence and the application for affiliation which is pending with the University by giving provisional affiliation would be disposed of by the authorities before commencement of the academic session 1989-90 after giving reasonable opportunity to the Institute.

9. In the result, the writ applications are allowed. Let writ be issued to the State Government 10 dispose of the pending application for concurrence before commencement of the academic session 1989-90 and writ be issued to the University to (i) grant provisional affiliation for the academic sessions 1985.87 and 1988-89; (ii) examine the students of the College admitted in the year 1986-87 for the course 1986-88; and, (iii) dispose of the application for affiliation within four months after receipt of the order of the State Government with regard to the concurrence. No costs.

R.C. Patnaik, J.

10. I agree.